# In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 374

SAMUEL WRIGHT, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES

Petitioner was convicted by a jury in the United States District Court for the District of New Jersey for willful failure to pay the special occupational tax imposed by 26 U.S.C. 4411 on those engaged in the business of accepting wagers, and for willful failure to register as one engaged in such business, as required by 26 U.S.C. 4412 (App. 3–4, 139).[1] On July 5, 1966, the trial judge awarded petitioner a suspended sentence, placed him on probation for five years, and fined him $3,500 (App. 139–140). The court of appeals affirmed (Pet. App. 1–10).

[1] "App." refers to appellant's appendix in the court of appeals, a copy of which is on file with the Clerk of this Court; "Pet. App." refers to the appendix to the instant petition.



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1. The issue posed by petitioner (Pet. 2, 11) as to the constitutional validity, under the Fifth Amendment, of the special occupational tax on wagering and the registration requirement relating thereto (26 U.S.C. 4411–4412) is presently before the Court in *Marchetti* v. *United States*, No. 2, this Term, restored for reargument together with *Grosso* v. *United States*, No. 12, this Term. Accordingly, we suggest that action with respect to that issue be deferred until *Marchetti* and *Grosso* are decided. Since disposition as to the self-incrimination question raised here will probably be controlled by those cases, it seems appropriate to hold the instant petition pending argument and decision therein.[2]

2. There is, however, no merit to petitioner's remaining claims challenging the lawfulness of the search and seizure here involved and the sufficiency of the evidence generally.

a. At a pre-trial hearing on petitioner's motion to suppress evidence seized from him during a raid on the gambling premises, the following evidence was adduced:

From August 1964 until December 16, 1964, a luncheonette in Asbury Park, New Jersey, known as "Mike's Sugar Bowl", which was suspected of being a front for a lottery and horse-betting operation, was kept under surveillance by Internal Revenue agents (App. 20, 8, 12–13, 23, 27, 31–32). Agent Duffy testified at the hearing that, during this surveil-

[2] Although the self-incrimination question is not discussed in the court of appeals' opinion, that issue was raised in the district court by a motion to dismiss and appears to have been adequately preserved in the court of appeals (see Pet. 2).

lance, undercover agent Taylor placed some thirty bets at the "Sugar Bowl" (App. 14–15), and that, on December 14, 1964, while inside the luncheonette, Taylor saw a man fitting petitioner's description accept a wager (App. 16, 17–18).[3] The surveillance additionally revealed that petitioner and one Miraglia had come to the premises daily for two months during the "critical wagering period"—*i.e.*, between 11:00 a.m. and 1:00 p.m. (App. 23, 25). Internal Revenue Service files further showed that petitioner and Miraglia had arrest records for gambling and were believed to be engaged in wagering activities (App. 23).

On December 16, 1964, a federal search warrant was obtained for the luncheonette and an arrest warrant for the proprietor, Michael Delloiacono (App. 14–15, 20–21). At about 11:00 a.m. federal and State agents conducted a joint raid on the premises (App. 16, 21, 32). Just prior to the raid, the federal agents had told State officer Maziekien that the "Sugar Bowl" was a front for a gambling operation (App. 8, 12–13). Just after he entered, Maziekien saw petitioner and Miraglia standing in the main room and asked them to identify themselves (App. 7–8). When they did, he remembered that petitioner had been arrested in "either '62 or '63" during a State lottery raid in which the agent had participated, and that Miraglia had been arrested on State gambling offenses in 1948 (App. 8, 10, 11). At this point, Maziekien ordered the men to move "in two different"

[3] Taylor did not testify at the hearing on the motion to suppress; at trial he testified in detail to activities engaged in at the luncheonette by petitioner which he had witnessed (see *infra*, p. 6).

directions and to empty their pockets. Both complied (App. 8, 11, 12, 19). The contents of petitioner's pockets included over $700 in cash and an "adding machine type paper, bearing amounts and names" (App. 71). These items were thereafter taken into custody by the federal agents. Petitioner's motion to suppress the paper was denied by the trial court (App. 31–34).

As the foregoing recital demonstrates, while an unchallenged and warrant-based search of a premises reasonably believed to be a front for a gambling operation was going on, petitioner was spotted on the premises by a State agent who recognized him as having been previously arrested for a State gambling offense. This information was enough—as the court of appeals held (see Pet. App. 2–10)—"to warrant a prudent man in believing that the petitioner had committed or was committing an offense," and, hence, to justify petitioner's arrest and the incidental search of his person by the State officer. *McCray* v. *Illinois*, 386 U.S. 300, 304–305; *Brinegar* v. *United States*, 338 U.S. 160, 175–176; *Draper* v. *United States*, 358 U.S. 307, 310–312. Moreover, since the State agent was proceeding in conjunction with the federal officers, the information which the federal officers had, prior to their entry upon the premises, as to petitioner's previous gambling activities, was properly imputable to the State agent. Petitioner should not be allowed to benefit from the fortuitous circumstance that he was seen first by an agent whose personal knowledge of petitioner's illegal involvement was less substantial than the collective information

of other agents who either participated in the raid or in the surveillance which preceded it. See, *e.g.*, *Smith* v. *United States*, 358 F. 2d 833, 834–836 (C.A. D.C.); *Weise* v. *United States*, 251 F. 2d 867, 868 (C.A. 9), certiorari denied, 357 U.S. 936; *United States* v. *Bianco*, 189 F. 2d 716, 719 (C.A. 3); see also *United States* v. *Ventresca*, 380 U.S. 102, 111.

Nor is there any substance to the claim that, since agent Maziekien did not formally announce that petitioner was under arrest, the search which followed was unreasonable. So long as the agent had probable cause for petitioner's arrest when he acted to restrain his liberty of movement—as was plainly the case here—no ritual of words of arrest was needed to authorize his actions. *United States* v. *Baxter*, 361 F. 2d 116, 118–119 (C.A. 6), certiorari denied, 385 U.S. 834; *United States* v. *Thompson*, 356 F. 2d 216, 222 (C.A. 2), certiorari denied, 384 U.S. 964; *Dickey* v. *United States*, 332 F. 2d 773, 778 (C.A. 9), certiorari denied, 379 U.S. 948; *United States* v. *Boston*, 330 F. 2d 937, 939 (C.A. 2), certiorari denied, 377 U.S. 1004; see also *Henry* v. *United States*, 361 U.S. 98, 103.*

* Petitioner's discussion of two New Jersey Supreme Court decisions which he asserts are essentially in conflict (see Pet. 16–23) hardly provides a basis for further review on this particular point. Here the court of appeals took into account the decision in *State* v. *Conturzi*, 44 N.J. 422, 208 A. 2d 829, which followed *Henry* and similar federal court decisions, and which was closely parallel factually with respect to the circumstances surrounding the arrests made in each case (see Pet. App. 5–6). That another New Jersey case might possibly be viewed as in some respects in conflict with *Conturzi* does not mean that the court below improperly made reference to that decision.

b. Petitioner's contention (Pet. 14–16) that the evidence failed to establish that the petitioner was the principal in the gambling business is insubstantial. Under the unambiguous instructions of the trial judge, the jury was authorized to convict petitioner only if it found that he was the principal in the gambling enterprise—*i.e.*, "the man * * * running the show" (App. 136–137, 131–132). The jury's conclusion that petitioner fell into that category finds ample support in the record of trial.

Undercover agent Taylor testified at trial that he saw petitioner at the luncheonette on at least four separate occasions in early December 1964, shortly before the December 16 raid. Petitioner's activities, as witnessed by Taylor, included reading racing forms discussing horses, accepting telephone calls with respect to horses, and making notations on 3 x 5 pads following these telephone conversations (App. 48–51). On December 15 Taylor witnessed another person answer the telephone at the luncheonette and then come over to petitioner, hand him a slip of paper and state, "Four dollars on Powan". Petitioner acknowledged the information and put the slip of paper in his pocket (App. 51–52). The paper found on petitioner's person on the date of the raid was described by agent Taylor as the "type slip a banker or a bookmaker or a bet controller usually has in his possession," the names and figures on which indicated the "financial indebtedness to be paid by * * * the operator of the entire unit" (App. 57, 58). Agent Dubow, who was in charge of the raid, testified that the paper was "a settlement sheet between a principal or someone who has to account for the moneys and the bettors or other

writers" (App. 72), and that it would be "customarily" in the possession of a "bookmaker" (App. 73).[5] There was further testimony that, although petitioner had $715 in cash in his possession at the time of the raid (App. 71, 88, 93), when asked what he did for a living, he stated that he was "self-employed", doing odd jobs "including the cleaning of cellars and the cutting of lawns" (App. 87).[6] The evidence also showed that petitioner had never paid the special occupational tax or provided any registration information concerning his gambling activities (App. 39–40). Viewed in terms most favorable to the government, *Glasser* v. *United States*, 315 U.S. 60, 80, this evidence supported the jury's finding that petitioner was a principal in the gambling operation. *United States* v. *Calamaro*, 354 U.S. 351, relied upon by petitioner (Pet. 13–14), is thus inapposite.

Respectfully submitted.

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[5] Undercover agent Taylor and agent Dubow both qualified as experts in the operations of gambling businesses (see App. 40–41, 66–67).

[6] Before making these responses to the federal agents, petitioner had been advised of his constitutional rights (App. 85). Defense counsel had "no objection" to the introduction of these statements into evidence at trial (App. 86).

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